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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,522	01/02/2004	Beka Solomon	SOLOMON=2B.2	9533
1444	7590	10/03/2007	EXAMINER	
BROWDY AND NEIMARK, P.L.L.C.			BALLARD, KIMBERLY A	
624 NINTH STREET, NW			ART UNIT	PAPER NUMBER
SUITE 300			1649	
WASHINGTON, DC 20001-5303				

  

MAIL DATE	DELIVERY MODE
10/03/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action Before the Filing of an Appeal Brief</b>	Application No.	Applicant(s)
	10/749,522	SOLOMON ET AL.
	Examiner Kimberly A. Ballard	Art Unit 1649

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 September 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a)  The period for reply expires 5 months from the mailing date of the final rejection.
- b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

- (a)  They raise new issues that would require further consideration and/or search (see NOTE below);
- (b)  They raise the issue of new matter (see NOTE below);
- (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 7-11 and 25-34.

Claim(s) withdrawn from consideration: 1-6.

#### AFFIDAVIT OR OTHER EVIDENCE

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.

12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_

13.  Other: \_\_\_\_\_.

/Elizabeth C. Kemmerer/  
Primary Examiner, Art Unit 1646

Continuation of 11. does NOT place the application in condition for allowance because: The request for reconsideration has been fully considered. Applicants' arguments are substantially as presented previously. All claim limitations are as previously presented, considered and rejected for the same reasons of record as previously set forth. The evidence submitted in the form of the Delmastro et al. paper has also been considered of record. Applicant argues that the administration of phage in mice is highly immunogenic, as evidenced by the teachings of Delmastro, and thus the skilled artisan would not be motivated to use a phage as a delivery system for an antibody, as an immune response would ensue. Applicant asserts that the present invention, which is directed to intranasal administration of the phage, has the unexpected property that the phage bypasses the blood brain barrier and can therefore be used as a delivery vehicle to get antibody to the brain. This is not found persuasive because: 1) the claims are directed to a product and not a therapeutic method, and therefore the intended use of the composition is of secondary consideration. Any use of the composition, such for therapy, diagnosis, or even the generation of antibodies would be sufficient to meet the limitations of the claims and obviate the instant invention. 2) At the time of filing, the skilled artisan was well aware that the intranasal administration of peptides was a way to circumvent the blood brain barrier (see, for example, Pietrowsky et al. *Biol Psychiatry*, 1996; 39:332-340). And finally, 3) Delmastro notes at p. 1282 that intranasal administration of phage is immunogenic, and is more immunogenic even than other routes of administration such as intragastral (i.g.) administration. Therefore, according to Delmastro, the instant invention would similarly be expected to be immunogenic, despite the fact that this characteristic is not recited claims. As such, the skilled artisan would reasonably expect there to be no immunogenic difference between the currently claimed invention and the prior art of record. Accordingly, the rejections of record are maintained and the after final amendment has been entered in full.